Be Wary of any Combustible Cladding Material in Excess of 8% PE

The NSW Government has created the Cladding Product Safety Panel to provide expert advice to the NSW Cladding Taskforce and the Cladding Support Unit on the suitability of cladding replacement products and external wall assembly methods. The Cladding Product Safety Panel ("***CPSP***") members are made of experts trading in fire safety engineering, product testing, building certification, surveying, construction and building insurance.

On 30 March 2021, the CPSP **provided Report 1: Initial endorsement products and systems for Project Remediate** ("***CPSP No 1. Report***") a full copy can be viewed more information.

The CPSP No.1 Report advises on appropriate products for replacement of combustible material and provides recommendations on how flammable cladding should be assessed and remediated.

Of particular note is that the CPSP No 1. Report endorses:

a. **all flammable cladding should be removed** with no endorsement for remediation by alternative solution or "fire breaks" (except for very limited scenarios see below);

b. composite panels containing **more than 8%** combustible material by mass within their cladding core, such as polyethylene (PE) core is deemed **medium to high risk** and **needs to be replaced** – as held by the Insurance Council of Australia; and

c. products which contain combustible material of 8% or less of the cladding's core could potentially be retained, only **IF** strict requirements are met under the National Construction Code (NCC) in that the building avoids the spread of fire via its external walls (Performance Requirement CP2).

d. Cladding should be **mechanically fixed with no glue or double sided tape fixing** as the report notes that in instances of repairs carried out on composite panels by adhesives or tape fixings, there can be a potential risk of large pieces of panels/debris falling off a building in a fire as these materials often soften below temperatures of 120 degrees Celsius.

What's Next?

The CPSP No 1. Report provides expert advice only. It does not have powers to ban the use of flammable cladding. However, the CPSP No 1. Report provides advice to support the Cladding Taskforce and Cladding Support Unit, which propose further advice to consent authorities (local councils) who assess the safety and compliance of buildings, issue and enforce rectification orders and determine the suitability of remedial development applications (DAs).

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Implications - 8-30% PE Cladding deemed Medium to High Risk

It is likely that in future, there will be a second round of cladding replacement for 8-30% PE cladding, therefore Owners Corporations with such cladding may need to make financial provision for its replacement.

Owners Corporations with 8-30% PE cladding are likely to be slugged with increased insurance premiums (and possibly even difficulties in obtaining insurance coverage) due to the Insurance Council of Australia deeming such cladding medium to high risk.

Potential buyers of apartments with 8-30% PE cladding may be unable to obtain bank mortgages for such purchases creating a problem for existing lot owners who are looking and may be unable to sell.

Owners Corporations that have already replaced extremely flammable PE Cladding with cladding between 8-30% PE, as such cladding was not a banned product under the Building Products (Safety) Act 2017, may need to again replace the cladding and may need to look at potential claims against building professionals that advised on the replacement cladding.

Any building professionals who are advising on or undertaking cladding replacement should be aware that 8% is likely to become the new minimum PE % for cladding in the future.

Need for Government Response

Whilst the Government aims to focus on producing a policy for assessment and replacement of flammable cladding and the costs to carry out of the respective repairs, other indirect financial costs are being neglected, such as the effect of insurance premium increases.

The need to replace defective cladding on residential buildings is vital and more likely than not, owners will bear the financial losses even if they are covered under Project Remediate. The Government must act promptly to mitigate these risks and protect owners suffering financial hardships and mental distress.

Already involved in this disaster? Contact Bannermans Lawyers on 02 9929 0226 or at enquiries@bannermans.com.au for advice and assistance.

Key takeaways

- The CPSP No 1. Report advises that all flammable cladding should be removed without remediation alternatives.
- Cladding containing more than 8% combustible material is considered medium to high risk and must be replaced.
- Owners Corporations with 8-30% PE cladding may face increased insurance premiums and difficulties in selling properties.
- Future regulations may set 8% as the new minimum for combustible cladding materials.
- Building professionals must stay informed about the evolving standards for cladding materials.

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